

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY T. COCCIARDI,  
Debtors.

Case No. 91-5-7664-MM

JANICE WONNACOTT WAITT,  
MALCOLM G. WAITT,  
Plaintiffs,

Adversary No. 92-3-127-MM

vs.

**MEMORANDUM DECISION AND  
ORDER THEREON**

ANTHONY COCCIARDI,  
Defendant.

**INTRODUCTION**

This matter is before the Court on the plaintiffs' motion to reconsider their earlier motion for an order of abstention. For the reasons that follow, the motion is denied.

**FACTS**

Janice Waitt and Malcolm Waitt filed this action against Anthony Cocciardi on June 29, 1990 in the California Superior Court for San Mateo County seeking injunctive relief, an accounting, imposition of a constructive trust, general damages, and exemplary damages based on a breach of fiduciary duty, misappropriation, and conversion of trust assets. Cocciardi, the debtor, was the trustee of the Murl Eaton testamentary trust from his appointment in August 1976 until his

1 resignation in July 1990, at which time Malcolm Waitt was appointed as successor trustee. William  
2 Eaton, the life beneficiary of the trust, died in February 1989. Janice Waitt is the adoptive daughter  
3 of William Eaton, the sole remainderperson of the trust, and the co-administrator of the estate of  
4 William Eaton. Malcolm Waitt is Janice Waitt's husband, the co-administrator of the estate of  
5 William Eaton, and the successor trustee of the Murl Eaton trust.

6 Among other things, the Waitts allege that Cocciardi misappropriated and converted trust  
7 funds to his personal use and benefit, commingled those funds with his personal funds, mismanaged  
8 those funds to the detriment of the beneficiary and remainder-persons, and failed to account for trust  
9 funds. On September 20, 1991, the Superior Court ordered the attachment of a lien in the  
10 total amount of \$3,000,000 to the debtor's property located at 104 Holiday Drive, La Selva Beach,  
11 California and to the debtor's interest in a \$1.6 million promissory note secured by a deed of trust on  
12 the property located at 112 Holiday Drive, La Selva Beach, California. The debtor intends to seek to  
13 avoid the lien under state law as well as bankruptcy law.

14 Cocciardi filed a Chapter 11 petition on December 13, 1991 and removed the state court  
15 action to this court on March 12, 1992. The Waitts filed proofs of claim on February 24, 1992. They  
16 also filed a complaint to determine dischargeability under section 523 on March 20, 1992 based on  
17 the same alleged conduct of the debtor. This Court set the removed action and the dischargeability  
18 action for a consolidated pre-trial conference and trial.

## 20 DISCUSSION

### 21 A. Mandatory Abstention

22 28 U.S.C. § 1334(c)(2) provides that abstention is mandatory if three elements are satisfied:

23 (1) The proceeding is based upon a state law claim or cause of action which, although related  
24 to a case under Title 11, does not arise under Title 11 or arise in a case under Title 11;

25 (2) The proceeding could not have been commenced in federal court absent bankruptcy  
26 court jurisdiction; and

27 (3) The proceeding could be timely adjudicated in a state court. 28 U.S.C. § 1334(c)(2).

28 The first element required for the mandatory abstention statute to apply is that the proceeding

1 must be a related, non-core proceeding. In re McFadyen, 92 Daily Journal DAR 13664 (E.D. Cal.  
2 Sept. 30, 1992). 28 U.S.C. § 157(b)(2) enumerates a non-exclusive list of specific matters that are  
3 deemed core. However, not all proceedings that fall into the literal wording of section 157(b)(2) are  
4 core proceedings. See In re Castlerock Properties, 781 F.2d 159, 162 (9th Cir. 1986).

5 To determine whether a case is core, the Court must look to both the form and the substance  
6 of the proceeding. In re Wood, 825 F.2d 90, 97 (5th Cir. 1987). Determining whether a proceeding  
7 is core requires an analysis of the claims for relief and a finding that "they sufficiently effect the  
8 debtor-creditor relationship so as to justify issuance of a final order." In re World Solar Corp., 81  
9 Bankr. 603, 608 (Bankr. S.D. Cal. 1988). Although the issues will be resolved applying state law,  
10 that in itself does not determine whether this is a core proceeding. 28 U.S.C. § 157(b)(3).

11 In the instant proceeding, the state law claims for relief  
12 have a significant impact on the bankruptcy estate.

13 The finding of a constructive trust ... and a determination of the  
14 proper distribution of that trust are intimately tied to the traditional  
15 bankruptcy functions and estate, and, therefore, are core matters  
16 within the clear jurisdiction of the bankruptcy court.

17 In re Johnson, 960 F.2d 396, 402 (9th Cir. 1992)(emphasis added). See also In re North  
18 American Coin & Currency, Ltd., 767 F.2d 1573, 1575 (9th Cir. 1985), cert. denied sub nom.  
19 Torres v. Eastlick, 475 U.S. 1083 (1986).

20 A constructive trust is not the same kind of interest in property as a  
21 joint tenancy or a remainder. It is a remedy, flexibly fashioned in  
22 equity to provide relief where a balancing of interests in the context  
23 of a particular case seems to call for it .... We necessarily act very  
24 cautiously in exercising such a relatively undefined equitable power  
25 in favor of one group of potential creditors at the expense of other  
26 creditors...

27 North American Coin & Currency, 767 F.2d at 1575.

28 It is also significant that the plaintiffs have filed proofs of claim in this case, submitting to  
the jurisdiction of the Court. See Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782  
(1989). They have also filed a complaint to determine dischargeability based on the same alleged  
conduct of the debtor. Because the two proceedings are interrelated, and the issues are the same,  
the Court has set them for a consolidated pre-trial conference and trial. Clearly, the plaintiffs have

submitted to the equitable jurisdiction of the Court to determine those issues. In In re Marshland Development, Inc., the Court determined that a suit for environmental damage that had been removed to the bankruptcy court by the debtor-defendant had been transmuted into a core proceeding because the essence of the action was claim resolution. In re Marshland Development, Inc., 129 Bankr. 626, 632 (Bankr. N. D. Cal. 1991).

[T]he essence of this action is the resolution of a claim, and as such it is inextricably bound up in the bankruptcy process. The result of this proceeding, the resolution of the largest claim against the estate, will doubtless determine whether or not the Debtors will ultimately be able to reorganize.

Id. (emphasis added).

Similarly, the removed action has been transmuted into a core proceeding because the essence of the action is the dischargeability of the alleged debt, which is defined as a core proceeding under section 157(b)(2)(I). Plaintiffs' claims constitute the largest claims against the estate. The determination of plaintiffs' entitlement to relief in the two adversary proceedings will necessarily impact the further administration of the estate. The Waitts' claims and their related dischargeability action are integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction. See Langenkamp v. Culp, \_\_\_ U.S. \_\_\_, 111 S.Ct. 330, 331 (1990). Their determination will affect "creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res." Granfinanciera, 492 U.S. at \_\_\_, 109 S.Ct. at 2798. Ratable distribution among all creditors is one of the strongest policies behind the bankruptcy laws. In re North American Coin & Currency, Ltd., 767 F.2d at 1575.

The catch-all provisions of section 157(b)(2), subsection (A) "matters concerning the administration of the estate" and subsection (O) "other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship," should be narrowly read. In re Ben Cooper, Inc., 896 F.2d 1394, 1398 (2d Cir. 1990), vacated, \_\_\_ U.S. \_\_\_, 111 S.Ct. 425 (1990), reinstated, 924 F.2d 36 (9th Cir 1991); In re Wood, 825 F.2d at 95. However, the claims for relief before this Court do not "fit within the literal wording" of subsections (A) and (O). See In re Castlerock Properties, 781 F.2d at 162.

1 They go to the very core of Mr. Cocciardi's bankruptcy case and will impact his ability to  
2 reorganize. The Court, therefore, finds that this is a core proceeding, and mandatory abstention is  
3 inappropriate.

#### 4 **B. Discretionary Abstention**

5 The Court may, in its discretion, nonetheless abstain from hearing a matter in the interest  
6 of justice, or in the interest of comity with state courts or respect for state law. 28 U.S.C. §  
7 1334(c)(1). In In re Tucson Estates, Inc., the Ninth Circuit identified twelve factors that a court  
8 should consider when deciding whether to abstain from hearing a case. In re Tucson Estates,  
9 Inc., 912 F.2d 1162, 1167 (9th Cir. 1990).

10 After considering the arguments of counsel, if the Court were to sever the constructive  
11 trust claims absent the cooperation of the debtor, this case may be delayed interminably while the  
12 issues are resolved on appeal. The issues raised in the removed action will necessarily affect the  
13 efficient administration of this bankruptcy estate. The determination of the plaintiffs' claims for  
14 relief will have a significant impact on the restructuring of the debtor-creditor relationship and the  
15 ratable distribution among creditors. This is in essence a proceeding to determine  
16 dischargeability, which is a core proceeding that is inextricably entwined with the main bankruptcy  
17 case. To sever the damages and accounting claims may be an inefficient use of judicial resources,  
18 even with detailed instructions regarding the findings. Clearly, resolving the issues in one forum  
19 will be more efficient.

20 Further, state law issues do not predominate over the bankruptcy issues of dischargeability  
21 and the imposition of a constructive trust over assets of the debtor's estate. There is also diversity  
22 of citizenship between the parties to this proceeding, so federal jurisdiction exists independently of  
23 the bankruptcy case. Lastly, the bankruptcy court's docket is currently not so burdened that it  
24 would not be able to accomodate a 9 day trial by March, 1993, which is approximately when the  
25 Superior Court for San Mateo County could hear this case. The Court concludes that a balancing  
26 of the Tucson Estates factors tips in favor of denying the motion for abstention.

#### 28 **CONCLUSION**

1           Upon reconsideration, the Court concludes that mandatory abstention would be  
2 inappropriate in this case because it is a core proceeding. The Court has also considered the  
3 factors enunciated in Tucson Estates for the exercise of discretionary abstention and concludes  
4 that the balance favors the Court's retention of jurisdiction. Therefore, the plaintiffs' motion is  
5 denied.

6           Good cause appearing,

7           IT IS SO ORDERED.

8  
9 DATED:

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**C. Amendment/Supplement to Petition**

Having determined that this Court shall retain jurisdiction over this matter, the Court now considers the plaintiffs' Motion to Amend and Supplement Petition.

Fed. R. Civ. P. 15(a) provides that after a responsive pleading has been filed, a party may amend a pleading only by leave of court, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(d) authorizes the supplementation of a pleading to set forth transactions, occurrences, or events which have happened since the date of the original pleading. The purpose is to promote as complete an adjudication of the dispute between the parties as is possible. LaSalvia v. United Dairymen of Arizona, 804 F.2d 1113, 1119 (9th Cir. 1986). The discretion exercised in deciding whether to grant leave to amend or to supplement is similar, and the formal distinction is not significant. Lewis v. Knutson, 699 F.2d 230, 239 (5th Cir. 1983).

Further, Fed. R. Civ. P. 15(c) permits an amended pleading to relate back to the date of the original pleading if the assertions in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading. The purpose of this provision is to ensure proper notice to the defendant of the claims against him. Andujar v. Rogowski, 113 F.R.D. 151, 155-56 (S.D.N.Y.)

The reasons that a court may deny a motion for leave to amend include undue delay, bad faith, prejudice to the opposing party, or the futility of the amendment. Id. at 154. However, a supplemental pleading may bring in additional parties when subsequent events make it necessary to join them, and it would be convenient to litigate all the claims between the parties in the same action. Keith v. Volpe, 858 F.2d 467, 474 (9th Cir. 1988). A court may even permit amendments to add additional plaintiffs after the running of the limitations period where the proposed amendment relates back to the same conduct, transaction, or occurrence set forth in the original pleading. Id. at 155-56. See also In re Englander, 92 Bankr. 425, 428 (9th Cir. BAP 1988)(amendment to complaint objecting to the dischargeability of a debt permissible after bar date if clear subject of both original and amended complaints is dischargeability of specific loan or debt).

Although the plaintiffs have demonstrated a lack of diligence and perhaps inartful drafting,

1 the defendant is not prejudiced by the allownce of an amended complaint because the purpose of  
2 proper notice is not defeated here. The amendments to the petition apear to be based on and  
3 related to the same claims for relief asserted against Cocciardi in the original petition. At all times  
4 during this proceeding, Cocciardi has been on notice that the claims against him are based on the  
5 alleged breaches of fiduciary duty and misconduct while trustee of the Murl Eaton trust. He has  
6 also been aware of who the plaintiffs are, regardless of the capacity in which they pursued their  
7 claims against him. The defendant will have sufficient time in advance of trial to address the  
8 concerns he has raised in connection with the amended complaint. If necessary, he may request  
9 appropriate relief at the time of the pre-trial conference.

10 It also does not appear that the plaintiffs have requested these amendments in bad faith or  
11 for the purpose of delaying the trial. As a matter of fact, the plaintiffs want to have this case tried  
12 quickly. The defendant will not be required to file an answer to the amended complaint. It  
13 appears that good cause exists to grant the Motion to Amend and Supplement, and it's hereby  
14 granted.